European Grain & Shipping Ltd v Compania Naviera Euro-Asia SA & Ors

HIGH COURT (SINGAPORE) — ADMIRALTY IN PERSONAM NO 389 OF 1987
CHAN SEK KEONG J
21 OCTOBER 1989

Civil Procedure — Mareva injunction — Whether real risk of dissipation of assets pending award in London arbitration — Defendant company incorporated in Panama with small capital and financed by holding company — Whether full disclosure of company's operations, assets and financial position made — Order for discovery in aid of injunction — Motive of plaintiffs in applying for injunction — Abuse of process of Mareva injunction

On 5 November 1987, the plaintiffs issued a writ against the first defendant indorsed with a claim for (1) damages for breach of charterparty; (2) loss and damage to cargo laden on the first defendant's vessel sustained by reason of the first defendant's breach of contract or duty or negligence in or about the carriage thereof; and (3) an account of extra freight and/or profits earned in chartering out the plaintiffs' space on the said vessel.

On 23 November 1987, the plaintiffs obtained an injunction ex parte restraining the first defendant firstly, from removing its assets from the jurisdiction save in so far as the same exceeded £650,000 and secondly, from drawing on its accounts in the name of either the second, third or fourth defendants at five named banks in Singapore so as to reduce the balance below £650,000. The plaintiffs' supporting affidavit alleged, inter alia: (1) that the first defendant was incorporated in Panama with a capital of US$10,000 as a wholly-owned subsidiary of the second defendant and was a company of no substance; (2) that there was a real risk of assets being removed before any award in a pending London arbitration could be satisfied on the grounds of, inter alia, (a) the first defendant's recent incorporation in 1986 and domicile in Panama, its small size, its activities as a trading company without any fixed assets and the inaccessibility of its financial records; (b) its gross breach of its obligations under the charterparty and its lack of candour in responding to the plaintiffs' demands; and (c) it was likely that the first defendant would not have maintained its own separate bank account and its funds would be maintained in the funds of the second defendant and/or the group of companies of which the second defendant was the holding company. On 8 December 1987, the plaintiffs obtained an order for discovery in aid of the Mareva injunction. On 30 July 1988, the interveners applied to intervene and for a variation of the injunction to allow for payment to them of certain sums awarded in separate legal proceedings.

It was not disputed by both counsel that the plaintiffs had a good arguable claim and the only dispute was whether, if the plaintiffs succeeded in the arbitration, there was a real risk that the first defendant would dissipate its assets so as to deny the plaintiffs the fruits of the success.

Held, discharging the injunction:

(1) As regards the financial position of the first defendant, full information was provided on its trading activities from July 1986 to December 1987 which clearly showed that it had insufficient capital from the beginning and was being financed by the second defendant. Its detailed cash flow statement had also been disclosed.

(2) The second defendant managed the financial affairs of its subsidiaries, which included the first defendant, and financial resources were pooled for more efficient management. The second defendant was not an insubstantial company and the evidence did not cast any suspicions as to the bona fides of the second defendant and its subsidiaries in the way they carried on their business.

(3) There was no real evidence which suggested that the first defendant would take steps to dissipate its assets to avoid the payment of any award in favour of the plaintiffs. Although the first defendant had ample opportunity to dissipate its assets before and after the plaintiffs' claim had been referred to arbitration, it did not do so. It continued to carry on its business and took no steps to conceal its assets.

(4) The plaintiffs' conduct clearly demonstrated that its motive in obtaining the Mareva injunction was to obtain security from the first defendant, which was an abuse of the process of a Mareva injunction.

(5) The first defendant was a member of a P and I Club which had sufficient funds to meet any award in favour of the plaintiffs.

[*Editorial Note*: The plaintiffs have appealed to the Court of Appeal vide Civil Appeal No 114 of 1988.]

Cases referred to

1 *Third Chandris Shipping Corp* v *Unimarine SA* [1979] 2 All ER 972 (refd)
2 *The 'Niedersachsen'* [1984] 1 All ER 398 (refd)

Christopher Lau for the plaintiffs.
Lawrence Boo for the defendants.
Jude Benny for the interveners.

Cur Adv Vult

Chan Sek Keong J: At the conclusion of the hearing of the application by the plaintiffs for the continuation of a Mareva injunction obtained by them against the first defendant ('CNEA') and an application by the interveners to vary the terms of the injunction, I varied the injunction in terms of the interveners' application and, after reserving judgment for a short period, I discharged it altogether. The plaintiffs have appealed against both decisions. I now give my reasons.

On 5 November 1987, the plaintiffs issued an admiralty in personam writ against CNEA indorsed with a claim for: (1) damages for breach of charterparty; (2) loss and damage to the plaintiffs' cargo which was laden on board CNEA's vessel 'Salamis' during the voyage from Qinhuangdao and Hsinkang to Avonmouth and Liverpool between July and November 1986 sustained by reason of CNEA's breach of contract or duty or negligence in or about the carriage thereof; and (3) an account of extra freight and/or profits earned by CNEA in chartering out the plaintiffs' space on the said vessel.

On 23 November 1987, the plaintiffs obtained the injunction ex parte restraining CNEA until trial or further

order, firstly, from removing its assets from the jurisdiction or disposing of or dealing with the same within the jurisdiction save in so far as such assets exceeded £650,000 and secondly, from drawing on its accounts in the name of the second defendant ('SSC'), the third defendant ('ESM') and the fourth defendant ('RC') at five named banks in Singapore so as to reduce the balance in such accounts to below £650,000.

The application for the injunction was supported by an affidavit sworn on 19 November 1987 by the plaintiffs' claims manager, JF Lester. The material allegations in the said affidavit were as follows:

(a) the plaintiffs chartered under a GENCON charterparty dated 8 July 1986 the entire vessel from CNEA for a voyage '1/2 SB Qinhuangdao completing 1/2 SB Xingang ...' and '1/2 safe berths each 1/2 safe ports ... West Coast United Kingdom ...' for a lump sum freight of $497,500 in terms which required the vessel to proceed directly to her destination unless ordered otherwise by the plaintiffs;

(b) the vessel loaded the plaintiffs' cargo of agricultural products at Qinhuangdao and Xingang between 20 July and 3 August 1986, then proceeded to Hong Kong for bunkering (which was permitted under the charterparty) and thereafter instead of proceeding to her contractual destination, deviated to the ports of Kota Kinabalu and Port Klang in Malaysia to load about 5,353 MT of sawn timber in the vessel's holds and on deck between 17 August and 12 September 1986;

(c) the vessel resumed her voyage on 14 September 1986 and on arrival off the west coast of Europe further deviated from her direct route in order to discharge the sawn timber at Rotterdam and Nantes contrary to the plaintiffs' order given on 7 October 1986;

(d) the unlawful deviations set out above resulted in at least four weeks delay in the performance of the charterparty;

(e) heating in hold No 3 was first detected in Kota Kinabalu and again in Port Klang; heating in hold No 3 was detected when the vessel passed Lisbon;

(f) on the vessel's arrival at Avonmouth on 31 October 1986, the plaintiffs' cargo in hold No 2 was reported to be on fire;

(g) as a result of the delay, claims by on-purchasers totalling £85,000 have been made against the plaintiffs; the plaintiffs' losses arising from deviation and damage to cargo were estimated at £650,000 inclusive of four years' interest and costs;

(h) the plaintiffs have failed to obtain security from CNEA and its underwriters;

(i) CNEA was incorporated in Panama with a capital of US$10,000 as a wholly-owned subsidiary of SSC; CNEA is a company of no substance and is properly to be regarded as a vehicle of SSC and/or ESM (which is an 80% subsidiary of SSC);

(j) there was a real risk of assets being removed before any award in an arbitration (which had been commenced in London on 29 October 1987) or judgment in the matter could be satisfied on the grounds: (1) CNEA's recent incorporation and domicile in Panama, its small size, its activities as a trading company without any fixed assets and the inaccessibility of its financial records; (2) CNEA's gross breach of its obligations under the charterparty and its lack of candour in responding to the plaintiffs' demands; (3) the unexplained use of the name of the fourth defendant in three of the bills of lading; (4) as security had been provided by CNEA and SSC to certain claimants against an affiliate company, it would be fair and just for security to be provided to the plaintiffs;

(k) it was likely that CNEA would not have maintained its own separate bank account and that its funds would be maintained in the funds of SSC and/or the group of companies of which the SSC was the holding company (hereinafter called 'the SSC group').

After the granting of the Mareva injunction, SSC, ESM and RC on 2 December 1987 applied to vary the second part of the injunction on the ground that none of them had any moneys of CNEA in their accounts or otherwise and that the injunction prevented them from operating their accounts in the ordinary course of business. The plaintiffs resisted the application but the court allowed the application thereof.

On 4 December 1987, the plaintiffs made an ex parte application to court for discovery, in aid of the Mareva injunction, of the nature, value and location of all the defendant's assets within the jurisdiction and also inspection of all documents in its possession relating to the freight of US$475,000 paid by the plaintiffs which went into CNEA's bank account No 260-234406-001 with the Hongkong and Shanghai Banking Corp ('HKSB') and the extra freight earned by CNEA and its books and accounts for 1986 and 1987 including but not limited to paying-in-slips, cheque stubs, bank statements and correspondence between CNEA and its banks relating to any financial dealing of CNEA. An order in terms of the application was made by the court on 8 December 1987.

On 8 December 1987, CNEA entered appearance. On the same day, SSC, ESM and RC also applied for leave to be joined as defendants in the action for the purpose of seeking damages suffered by them by reason of the Mareva injunction.

On the following day, ie 9 December 1987, CNEA applied to court to set aside the order for discovery on the ground that the application should not have been made ex

parte as CNEA had earlier appeared by counsel to argue the application for variation of the Mareva injunction. Other grounds of objection were set out in an affidavit affirmed by the solicitor for CNEA to which the solicitor for the plaintiffs replied in her affidavit sworn on 10 December 1987. The order for discovery was stayed pending further hearing.

Then on 17 December 1987, CNEA applied to court for a further variation of the Mareva injunction to permit CNEA to pay the following sums (a) US$31,000 to Mint Shipping Pte Ltd ('MS'); (b) US$86,800 to CN Jaya SA ('CNJ'); (c) $10,000 to Haridass Ho & Partners; and (d) £20,000 to Ince & Co. Payments (a) and (b) were for charterhire owing to MS and CNJ from whom CNEA had chartered the vessels 'Ikopa' and 'Athol'. Payments (c) and (d) were for legal fees and expenses. The plaintiffs again resisted this application but the court sanctioned payments (a) and (c) and adjourned the hearing of the application in respect of (b) and (d), liberty being given to CNEA to file further evidence in support thereof.

The next relevant event was the filing of a notice of motion on 30 July 1988 by CNJ to intervene in this action and for an order that the Mareva injunction be varied by allowing HKSB to pay out of CNEA's bank account the sum of US$212,000 together with interest and costs of $450, and costs of CNJ's garnishee proceedings in Suit No 1115 of 1988. This application was also resisted by the plaintiffs at the hearing before me.

It was not disputed by counsel for the defendants that the plaintiffs had crossed the threshold for claiming a Mareva injunction, ie they had a good arguable claim. The only dispute between the parties was whether if the plaintiffs succeeded in the pending arbitraton in London, there was a real risk that CNEA would dissipate its assets so as to deny the plaintiffs the fruits of their success.

I have earlier referred to the four grounds relied upon by the plaintiffs in obtaining the Mareva injunction. I shall now deal with each of these grounds.

The first ground was based on the following factors: (1) CNEA's recent incorporation (in 1986) in Panama as a wholly-owned subsidiary of SSC; (2) its small capitalization of US$10,000; (3) its status as a trading company without any fixed assets; and (4) the inaccessibility of its financial records. As regards factor (1), counsel for the plaintiffs referred to *Third Chandris Shipping Corp* v *Unimarine SA*[1] where the Court of Appeal affirmed the decision of the commercial court judge in granting a Mareva injunction against the defendant which was a Panamanian company. There, Lord Denning (at p 985a - d) made some observations on certain foreign incorporated companies as being as elusive as Cheshire cats and that such incorporation alone would be a ground for believing that there was a real risk of a judgment or an award being unsatisfied. Lord Denning was not stating a principle applicable to all foreign companies and indeed, the three members of the court carefully stated that foreign incorporation by itself was not a sufficient reason to justify the granting of a Mareva injunction. Lawton LJ (at p 987f) and Cumming Bruce LJ (at p 988h) emphasized as relevant the point whether particulars of the foreign corporation were available in the country it was registered. In *Third Chandris*,[1] the court found, on the evidence, that the defendants had 'presented an image of themselves made up of words, not of facts'. The defendant in that case had disclosed nothing concerning its assets. In the present case, CNEA made full disclosure not only of its shareholdings and relationship with SSC, but also its assets, trading operations, audited accounts and its inter-company accounts with SSC.

Factors (2) and (3), were not, in my view, unusual about a trading company. CNEA's business was in the chartering in and out of vessels. On the evidence produced by CNEA, it was chartering its vessels from related companies and its initial operations were financed entirely by its holding company, SSC. There was no necessity for it to have a high capitalization.

As regards factor (4), I have already mentioned that CNEA had made ample disclosure of its corporate status and assets. As far as its financial position was concerned, CNEA was, at the date of the Mareva injunction, indebted to SSC. CNEA's audited accounts for 1986 (audited by KPMG Peat Marwick) for 1986 showed that it had an accumulated loss of US$263,319. CNEA then had US$86,807 in its bank account but was owing US$452,808 to SSC. CNEA was therefore legally insolvent on 31 December 1986. However, note 2 on the accounts stated that 'the accounts had been prepared on a going concern basis which assumes that continuing financial support would be provided by the holding company'. The said loss was, as shown in its accounts ended 30 June 1987 for the purpose of consolidation with SSC's accounts, reduced to US$162,594 by 30 June 1987, at which date CNEA had US$235,754 in its bank account, but it was still owing US$445,421 to SSC.

CNEA had also provided full information on its trading activities from July 1986 to December 1987. It chartered in and chartered out to end-users and also fixed vessels for owners and charterers. A full list of these activities was set out in para 14 of CNEA's President, Kua Hock Eng's affidavit affirmed on 10 December 1987. On that day, CNEA was still operating two vessels on charter from CNJ and MS, viz Athol and Ikopa respectively. The Athol was chartered in at US$2,800 per day and chartered out at US$3,500-3,700 per day; and the Ikopa was chartered in at US$2,000 per day and chartered out at $1,950 per day. The Ikopa charterparty expired in December 1987 and was not renewed. The Athol charterparty was

extended for six months up to 1 July 1987 and further extended from 1 July 1987 for 14-18 months, with an option for another six months. Thus, as from 1 July 1987, CNEA would have been able to earn a net sum of US$1,500-1,700 per day for up to a maximum period of 24 months, ie not less than US$1,095,000. The HKSB bank statement of CNEA dated 30 September 1987 showed a credit balance of US$714,551.24 as at that date.

It was clear from the above evidence, and both counsel for the plaintiffs and for the defendants emphasized the fact, that CNEA had insufficient capital from the beginning and that its operations were being financed by SSC. CNEA operated at a loss up to the date of the Mareva injunction because of its heavy start-up costs. The injunction prevented CNEA from paying its charterparty hire to MS as well as CNJ. Hence, the application by CNEA on 17 December 1987 for variation of the terms of the injunction. CNEA, MS and CNJ were subsidiaries of SSC and all of them had running accounts with SSC. The financial affairs of the SSC group were managed by SSC and all the financial resources were pooled for better and more efficient management of the funds of the SSC group. SSC was not an insubstantial company; it owned seven container vessels, two bulk carriers and a general carrier, and was itself 70% owned by McIlwraith McEacharn Ltd, an Australian public company, with assets totalling A$280,028,000 as at 31 December 1987. The evidence before me did not cast any suspicions in my mind as to the bona fides of the SSC group in the way they had carried on their businesses.

For some inexplicable reason, the plaintiffs found the aforesaid financial arrangements sinister. They suggested that it was conducive to all kinds of dishonest acts and activities. I did not think there was any justification whatsoever for the plaintiffs' attitude. Group financial management was a common feature of all large commercial enterprises.

In addition to providing the information I have set out above, CNEA also disclosed a cash flow statement of its operations starting from 6 June 1986 up to 31 December 1987. The statement was as detailed as one could expect of a statement of this kind. CNEA did not claim that the entries were absolutely correct or that the statement was absolutely comprehensive, but on the other hand, there was no evidence that the statement was substantially unreliable; it was not suggested by counsel for the plaintiffs that it was not substantially incorrect. Unfortunately, the plaintiffs either failed or refused to understand the nature or purpose of this cash flow statement. They obtained an opinion from Touche Ross on it which, apart from cavilling at trifling discrepancies, did nothing to prove that there was anything suspicious or wrong with the said statement or that the entries did not bear out what the defendant had been saying all the time, that it was indebted to SSC as at 31 December 1987. The said accountants made the unsurprising point (which the plaintiffs relied upon) that CNEA was never in a position to satisfy a judgment of US$500,000 without parental support, which, of course, was what CNEA had admitted all along. On the basis of its existing charter, and with the Mareva injunction acting as a straitjacket on its trading activities, CNEA was never in a position to satisfy a judgment for this amount even if the charter on the Athol was fully extended: (counsel for CNEA had worked out the net profit on the said charter to be about US$273,000). Counsel for the plaintiffs also submitted, on the basis of the cash flow statement, that SSC was unlikely to allow CNEA to retain any of its profits, that the funds of CNEA had been siphoned off, and that substantial charterhire fees were being paid to related companies.

In my view, the disclosure of the cash flow statement was proof of CNEA's and SSC's candour in respect of their operational arrangements relating to the financing of the activities of CNEA. Funds went in and out: that was expected of a trading company. In my view, the plaintiffs' complaint concerning the payment of charterhire fees to related companies and its existing debts and liabilities was quite irrational. There was nothing wrong in CNEA paying its existing creditors, including its related companies, for bona fide debts which were due and owing. There was nothing wrong in CNEA paying current expenditure from its current income in order to carry on its business. There was nothing wrong in freight being paid direct to SSC, if that be the case, if the same were accounted for by SSC. There was nothing wrong, from a commercial point of view, for SSC from carrying on its business through Panamanian companies; this was a normal method of carrying on shipping business and, in my view, did not imply dishonesty or craftiness (in its derogatory sense) on the part of the directors or shareholders.

Counsel for the plaintiffs also contended that in Suit 2611 of 1987 in which SSC was a defendant, allegations of conspiracy had been made against SSC in relation to the documentation of the sale and transportation of a cargo of steel plates to Taiwan. The fraud here was that SSC had knowingly prepared false documents to hide the fact that the cargo was from Durban, South Africa and not from Hamburg. CNJ and EAS were also alleged to have been involved as the disponent owners and the managers respectively. As SSC had denied these allegations and the action was still pending, I did not think it was right for me to take a view on these allegations on the basis that they had been proved.

Counsel for the plaintiffs also submitted that the conduct of CNEA which gave rise to the plaintiffs' claim was gross misconduct in that it had wrongfully earned freight in using the plaintiffs' space to load timber on board the vessel, and that CNEA had deviated the vessel

and tried to conceal the deviation. It was argued that all the above circumstances showed that CNEA and SSC could not be trusted to satisfy any award obtained by the plaintiffs in the arbitration, and hence there was a real risk of the assets of CNEA being dissipated. CNEA had denied these allegations: hence the arbitration proceedings. Again, it would be wrong on my part to express an opinion on the conduct of CNEA as if these allegations had been proved.

I disagreed with the submissions of counsel for the plaintiffs that there was a real risk of the assets of CNEA being dissipated for the following reasons. Firstly, beyond the fact that CNEA was a Panamanian company with a small capital, the plaintiffs never had real evidence which suggested that CNEA would take steps to dissipate its assets to avoid the payment of any award in favour of the plaintiffs. The Court of Appeal in *Third Chandris*[1] said that this, by itself, was not a sufficient ground. The plaintiffs knew something about the affairs of SSC when they applied for the Mareva injunction as they had sight of the audited consolidated accounts of SSC and its subsidiaries, but they knew nothing about CNEA other than that it chartered the Salamis to them and that it had a bank account with HKSB into which the freight had been paid. Accordingly, the application for the injunction was a shot in the dark. When the facts were made known to the plaintiffs, the most important being that CNEA had two existing vessels on charter from its related companies and really had no available funds then to meet all its debts, the facts spoke for themselves. However, the plaintiffs were unable to come to terms with these facts, and so they refused to accept them. They proceeded to argue that because CNEA was insolvent, it must follow that they could not meet any award against them and that there was a real risk of dissipation of its assets, and that because its finances were managed by SSC, its funds were being siphoned off by SSC. When it was disclosed that the charter of the Ikopa was not profitable, the motive of CNEA in entering into such a commercially imprudent charter was questioned by the plaintiffs on the basis that there was something fishy and fraudulent about it. On this point, I accepted the explanation that sometimes a charter could turn out unprofitable as otherwise, no shipping company would ever founder.

The second reason for concluding that there was no real risk that CNEA would dissipate its assets was that it had ample opportunity to do so before and after the plaintiffs' claim had been referred to arbitration. It did not do so. It continued to carry on its business and to remit money into its bank account with HKSB. CNEA had taken no steps to conceal its assets. Moreover, CNEA's only profitable asset, the Athol, was chartered from CNJ. If CNEA and/or SSC had intended to deprive the plaintiffs of the fruits of an award in their favour, they could simply have allowed or arranged with CNJ to terminate the charterparty on the ground of non-payment of charterhire fees, a situation which had, in fact been brought about by the injunction. If CNJ had done this, it could not have been faulted for taking this step. SSC had many other subsidiaries which could have chartered the vessel from CNJ. CNJ itself could have chartered out the vessel. Instead, the charterparty was extended in spite of the Mareva injunction. This was not a case of CNJ being prevented by the Mareva injunction from terminating the charterparty for breach of its terms and it was not so argued by counsel for the plaintiffs.

The third reason was this. The Mareva injunction merely restrained CNEA from drawing on its bank account with HKSB. Accordingly, there was nothing to prevent CNEA from opening any other account with any other bank in any part of the world, eg with a bank in Hong Kong where the administrative office of CNEA was situated. Yet, CNEA continued to remit the charterline fees into the bank account which was subject to a Mareva injunction. This was not the conduct of a dishonest defendant and one intent on concealing its assets in order to remove them from the reach of the plaintiffs.

The fourth reason I discharged the injunction was the motive of the plaintiffs in applying for the Mareva injunction and the conduct displayed by them from the day they obtained it. The plaintiffs had initially sought security from CNEA in the arbitration proceedings but were rebuffed. Having discovered that SSC and EAS had jointly and severally guaranteed an affiliated company in the amount of US$500,000, which security had nothing to do with the operation of the vessel Salamis, they considered it was fair and just that security should be provided for their claim. This clearly demonstrated that their motive in obtaining the Mareva injunction was to obtain security from CNEA. This was, of course, an abuse of the process of a Mareva injunction. Further proof of this motive was the way in which the plaintiffs conducted themselves in these proceedings after obtaining the injunction. Despite irrefutable evidence of such legal necessity, they refused to agree to any variation of the terms of the injunction to enable CNEA to pay its existing debts and liabilities, including its legal fees, in order to defend itself. They refused to agree to allow CNEA to pay the monthly charterhire fees to CNJ for the charter of the Athol so that CNEA could maintain the sub-charter for the eventual benefit of CNEA or its creditors, such as the plaintiffs would have been if they were to succeed in their claim. The plaintiffs' position was astonishing by any standard: it was that SSC should continue to finance the operations of CNEA so that every cent from the charter fees earned by CNEA would be available for payment into

the HKSB account to meet the claim of the plaintiffs. I had never before encountered such unreasonable and oppressive conduct by a party to whom an ex parte Mareva injunction had been granted. CNEA had to apply to court for every variation to which it was, in law, entitled. It was not therefore surprising that as a result of the plaintiffs' intransigent behaviour in this matter that CNJ resorted to suing CNEA for recovery of arrears of charterhire fees, which it did, and after obtaining judgment, followed it up with garnishee proceedings. When CNJ applied to vary the Mareva injunction in order that its garnishee order nisi could be made absolute, the plaintiffs, instead of accepting the undeniable fact that charterhire fees were due and payable to CNJ by CNEA, and agreeing to the variation, took on the high moral ground that CNEA and CNJ had colluded in allowing judgment to go by default. I did not think that, in the circumstances then prevailing, there was any collusive conduct in CNJ commencing an action against CNEA, even though a related company of CNJ, and in CNEA taking no step to defend an indefensible claim.

Finally, I should mention the last consideration I took into account for refusing to continue the Mareva injunction. There was undisputed evidence that CNEA was a member of a P&I Club which, it was also not disputed, had sufficient funds to pay any award made in favour of the plaintiffs in the arbitration proceedings and in which proceedings, it had appointed counsel to act on behalf of CNEA. Similarly, counsel for the defendants also confirmed, from the bar, that he had been appointed by the Club to represent the defendants in these proceedings. Although the plaintiffs had no direct recourse to the Club, I considered that they had indirect recourse to it through the mechanism of winding up CNEA. Further, there was no evidence before me to suggest that the Club would not honour its commitments to CNEA should the plaintiffs succeed. Counsel for the plaintiffs put forward the argument that this factor meant nothing as the Club had not confirmed that it would pay, but, in my view, this argument was only relevant if CNEA had been ordered to provide security for the plaintiffs' claim, which was not the case here.

In my view, the present case was one where the plaintiffs had obtained a Mareva injunction for the purpose of obtaining a security and had conducted its case in such manner. This was not the purpose of a Mareva injunction: see *The 'Niedersachsen'*.[2] Furthermore, I was not satisfied on the evidence that there was a real risk of CNEA dissipating or concealing its assets or of SSC dissipating or concealing the assets of CNEA to put them out of reach of the plaintiffs. On the contrary, all the evidence suggested that CNEA was carrying on its business in the normal way and would endeavour to meet any claims adjudged against them in the normal course of its business.

Order accordingly.

Solicitors: *Allen & Gledhill; Haridass Ho & Partners; Joseph Tan Jude Benny & Co.*

Reported by *Michele Rasanayagam*